

Introduced by Senator Dunn

January 30, 2006

An act to add Chapter 7.8 (commencing with Section 1129) to Part 3 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1213, as introduced, Dunn. Employment: port owner-operator drivers.

Existing law grants employees the right to have full freedom of association, self-organization, and designation of representatives of the employee's own choosing, to negotiate the terms and conditions of the employee's own employment, and to be free from interference, restraint, or coercion of employers in the designation of representatives or other activities for the purposes of collective bargaining. Existing law also specifically grants certain employees, such as agricultural employees, the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining.

This bill would state findings and declarations of the Legislature and state the intent of the Legislature to enact a solution to the economic imbalance between port owner-operator drivers and port motor carriers that would authorize collective organization, a system for resolving economic disputes, and increase economic efficiency, among other things, and that would be consistent with the state action immunity doctrine.

This bill would extend to port owner-operator drivers, as defined, the right to organize collectively to negotiate with port motor carriers, as defined, concerning their compensation, benefits, and terms and conditions of engagement, and would guarantee to port

owner-operator drivers the right to full freedom of association, including the right to form, join, and participate in organizations of their own choosing, to withhold their services on a collective basis, and to be free from interference, restraint, or coercion by port motor carriers or their agents.

This bill would also provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
2 all of the following:
- 3 (1) The flow of commerce to and from the intermodal
4 terminals of this state is a matter of vital economic interest.
- 5 (2) There has developed over the last 30 years a system of
6 trucking to and from intermodal terminals in which
7 employee-drivers have been replaced almost entirely by single
8 truck port owner-operator drivers who are largely new
9 immigrants with little or no access to capital or the ability to
10 bargain individually with trucking companies under whose legal
11 authority they operate.
- 12 (3) These port owner-operator drivers operate the oldest and
13 most polluting commercial vehicles in the California truck fleet
14 because they lack the capital to purchase newer, cleaner-burning
15 vehicles. These vehicles cause excessive diesel pollution, which
16 has created an increased health risk for the surrounding
17 communities.
- 18 (4) The conditions under which port owner-operator drivers
19 operate have led to long lines of drivers waiting to pick up
20 intermodal containers, causing unnecessary use of diesel fuel,
21 increased pollution, and health risks to the surrounding
22 communities.
- 23 (5) Intermodal terminal operators and shipping lines
24 encourage an oversupply of port owner-operator drivers, further
25 weakening the economic clout of the port owner-operator drivers
26 and increasing economic inefficiency.
- 27 (6) Intermodal terminal operators and shipping lines, which
28 are large multinational corporations, enjoy certain antitrust
29 exemptions allowing them to engage in collective activities to

1 increase their market clout, and these activities decrease the
2 ability of port owner-operator drivers to negotiate for higher
3 rates.

4 (7) The economic frustration of port owner-operator drivers
5 has frequently resulted in wildcat strikes, boycotts, and other
6 economically costly concerted activities outside of any organized
7 legal framework for the peaceful resolution of differences
8 between the drivers and the port motor carriers.

9 (8) The port owner-operator drivers, when they are classified
10 as independent contractors, are excluded from coverage by the
11 National Labor Relations Act (29 U.S.C. Sec. 141 et seq.) and,
12 therefore, may be granted rights by the states to engage in
13 self-organization and collective economic action.

14 (9) As a result of the conditions under which they operate, port
15 owner-operator drivers have virtually no ability to enter into fair
16 and equitable negotiations with port motor carriers who virtually
17 dictate the terms of contracts they offer drivers.

18 (b) (1) It is the intent of the Legislature to enact a solution to
19 the economic imbalance that has occurred between the port
20 owner-operator drivers and the port motor carriers.

21 (2) This solution would authorize collective organization, joint
22 negotiations, and a system for resolving economic disputes that
23 arise between port owner-operator drivers and port motor
24 carriers.

25 (3) This solution would increase economic efficiency, promote
26 healthy economic competition, and create a legal framework for
27 the peaceful resolution of economic conflict.

28 (4) This solution is consistent with the state action immunity
29 doctrine, which establishes immunity from federal antitrust law
30 for conduct taken or supervised by the state.

31 SEC. 2. Chapter 7.8 (commencing with Section 1129) is
32 added to Part 3 of Division 2 of the Labor Code, to read:

33
34 CHAPTER 7.8. PORT OWNER-OPERATOR DRIVERS
35

36 1129. Notwithstanding any other provision of law, port
37 owner-operator drivers shall have the right to organize
38 collectively to better their economic conditions through joint
39 negotiations with port motor carriers concerning their
40 compensation, benefits, and terms and conditions of engagement.

1 The port owner-operator drivers shall have full freedom of
2 association, including the right to form, join, and participate in
3 organizations of their own choosing, to withhold their services on
4 a collective basis, and to be free from interference, restraint, or
5 coercion by port motor carriers or their agents. Organizations
6 representing port owner-operator drivers may execute
7 agreements with a single port motor carrier or with multiple port
8 motor carriers.

9 1129.1. (a) The provisions of Chapter 10 (commencing with
10 Section 1138), regarding the issuance of injunctions, are
11 applicable to disputes between port owner-operator drivers and
12 port motor carriers.

13 (b) An organization representing port owner-operator drivers
14 and a port motor carrier may, upon mutual agreement, submit
15 any dispute to final and binding arbitration, including, but not
16 limited to, the settlement of any outstanding economic issues.

17 1129.2. (a) “Port owner-operator driver” means a
18 commercial driver who meets all of the following requirements:

19 (1) Owns or leases no more than one power unit and operates
20 that unit under a contract with a port motor carrier to do any of
21 the following tasks:

22 (A) Perform drayage of intermodal cargo containers from a
23 marine terminal to a point of first unloading, warehousing, or
24 interchange.

25 (B) Return empty containers or intermodal chassis to a marine
26 terminal.

27 (C) Deliver loaded cargo containers to a marine terminal for
28 export.

29 (2) Is classified as an independent contractor as defined by the
30 National Labor Relations Board, under the National Labor
31 Relations Act (29 U.S.C. Sec. 152(3)), and is not an employee of
32 a port motor carrier.

33 (3) Employs no commercial drivers.

34 (b) “Port motor carrier” is a commercial motor carrier that
35 engages in transportation of freight as described in paragraph (1)
36 of subdivision (a) to and from a marine terminal and that
37 contracts with port owner-operator drivers to provide that
38 transportation. A port motor carrier includes a marine terminal
39 operator, shipping line, or shipper that transports cargo

1 containers directly or through a subsidiary to and from a marine
2 terminal and employs port owner-operator drivers.
3 SEC. 3. The provisions of this act are severable. If any
4 provision of this act or its application is held invalid, that
5 invalidity shall not affect other provisions or applications that can
6 be given effect without the invalid provision or application.

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